IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Central Excise Application No.1 of 2006

The Commissioner of Central Excise
Raigad. .. .. Applicant
vs.

M/s.Vikram Ispat Ltd. .. Respondent

Mr.A.J.Rana with Ms.S.V. Bharucha for applicant.

Mr.Naresh Thacker with Mr.Sachin Chandarana i/by M/s.Manilal Kher Ambalal & Co. for respondent.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR, JJ.

DATED : 26th July 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. The applicant has sought to raise the following question in this Application:-

> " Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee was entitled to avail Modvat Credit on inputs received by it from Kudremukh Iron Ore Company Ltd., (a 100% EOU) inspite of the restrictions laid down regarding availment of credit per the first proviso to Notification No.5/94 Central Excise

(NT) dated 01.03.1994 under which the credit of duty to be availed shall be restricted to the extent of duty which is equal to the additional duty leviable on the goods under Section 3 of the Customs Tariff Act, 1975 paid for such inputs? "

We are informed that the question has arisen in view of the Larger Bench of the CEGAT deciding a Reference with respect to the Notification dated 1st March 1994 against the Revenue. The Reference had arisen in view of two different Benches of the Appellate Tribunal taking different view with respect to this Notification. This Notification lays down that the rate of duty will be restricted to the additional duty leviable on like goods under Section 3 of the Customs Tariff Act, 1975. As against that, the Larger Bench had taken the view that the assessee was entitled to avail of Modvat credit.

3. Mr.Thacker, learned Counsel appearing for the respondents, points out that in view of the provision of Section 35-G of the Central Excise Act, an Application which raises the question with respect to rate of duty or to the value of goods for the purposes of assessment, cannot lie to the

High Court. In our view, the question raised is clearly concerning the rate of duty to be applied. That being the position, this Court cannot exercise its jurisdiction. Appeal is dismissed.

4. It will be open to the applicant to raise the question by filing appropriate proceedings to the Apex Court.

(H.L. GOKHALE, J.)

(V.R. KINGAONKAR, J.)